THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.13973 OF 2004

Dated: 08-11-2005

Between

Gadde Tata Rao, S/o. Veeranna, Occ: Cultivation, Pothavaram, Nalla Jerla Mandal, West Godavari District.

...PETITIONER

AND

Sri Sitarama Swamy Temple Rep. by its Executive Officer, Pothavaram, Nallajerla Mandal, West Godavari District and others.

...RESPONDENTS

ORDER:

The grievance of the petitioner is that the Assistant Commissioner of Endowments, West Godavari District, refused to consider the request of the petitioner for extension of lease though the third respondent being the auction purchaser failed to take possession pursuant to the auction conducted granting leasehold right of the first respondent temple lands. Therefore, the said action is illegal and arbitrary and the petitioner seeks a Writ of Mandamus to direct the respondents 1 and 2 not to evict the petitioner without following the due procedure contending that he is a small farmer and the entire land in question is not cultivable land but only 3 ½ acres is cultivable and the remaining land out of the Ac.6-25 cents is waste land.

A counter has been filed by the first respondent stating that the petitioner was cultivating Ac.6-25 cents wetland of the first respondent's land situated in R.S.No.610 of Pothavaram Village of West Godavari District. The petitioner has been paying maktha of Rs.13,000/- per annum for the total extent of the land.

It is contended that the land is not a wasteland and the entire land is fertile land and there is water facility also. The petitioner was not in possession of the said land since 40 years as alleged by him but he was inducted into possession in the year 1984.

It is stated that pursuant to the judgment of the Apex Court in State of Andhra Pradesh v. Nallamilli Ram Reddy, the Government of Andhra Pradesh framed certain rules for the lease of agricultural lands belonging to the Endowments and Charitable Institution vide G.O.Ms.No.379 dated 11.03.2003 and in view of the said G.O. a notice dated 03.05.2003 under Rule 5(1) of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Lease of Agricultural Land Rules, 2003 (for short 'the Rules') was issued to the petitioner directing him to hand over the possession of the said land within 30 days from the date of receipt of the said notice as all the leases stand cancelled. After the lapse of the time specified the first respondent institution conducted public auction for the lease hold rights of the said land on 07.07.2003 and the third respondent became the highest bidder and the said auction was confirmed by the Deputy Commissioner of Endowments, Kakinada vide proceedings No.D.Dis.B5/11921/2003 dated 26.09.2003. The third respondent deposited 1/3rd amount of the highest lease amount of Rs.1,00,000/- per annum. It is further stated that the petitioner never objected for conducting auction and in fact, petitioner himself surrendered the land without raising any objections. As the petitioner is not a landless poor person, he has no right to question the action of the respondents in conducting the auction and no notice under Rule 5(2) of the Rules is required to be issued.

Learned Government Pleader for Endowments submits that a learned Single Judge of this Court in the case of **JANGILI NAGAIAH v. ASSISTANT COMMISSIONER OF ENDOWMENTS** held that if a lessee is not a landless poor no notice is required to be issued under Rule 5(1) of the Rules. Landless Poor Person itself is defined in the explanation to sub-section 2 of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, stating that if the cultivating tenant is having more than

2 ½ acres of wet land or 5 acres of dry land and whose monthly income other than from

such lands does not exceed Rs.250/- per mensum or Rs.3,000/- per annum is not a landless poor.

In the instant case admittedly the petitioner was a lessee of the first respondent temple land to an extent of Ac.6-25 cents and according to the first respondent it is wetland. Therefore, the said dispute in question cannot be decided in this writ petition.

The writ petition is accordingly dismissed.

_____

V. ESWARAIAH, J

November 8, 2005

DSK